

June 2, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Re: **Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (WT Docket No. 03-66)**

WRITTEN *EX PARTE* PRESENTATION

Dear Ms. Dortch:

Central Texas Communications, Inc., and Leaco Rural Telephone Cooperative, Inc., by counsel, and Teton Wireless Television, Inc. (collectively "Rural Operators")¹ hereby submit this written *ex parte* presentation in the above-referenced proceeding. In view of the recent flurry of *ex parte* presentations in this proceeding by companies who are asking the Federal Communications Commission ("FCC" or "Commission") to alter its rules to accommodate their latest future business plans, Rural Operators urge the Commission not to lose sight of the valuable and needed services they are providing to rural America today as the new service rules for Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") are finalized. The Commission has before it a delicate balancing act and must both protect rural broadband service providers and customers and advance future development of the spectrum.

The Commission understands that issues affecting rural wireless service providers are significantly different than those affecting service providers in urban markets.² In the MDS and ITFS bands, these differences are even more pronounced. While urban MDS and ITFS deployments have failed to materialize under any regulatory regime, rural MDS and ITFS deployments have quietly flourished by providing much-needed video and broadband services to rural subscribers, many of whom would not otherwise have access

¹ The Rural Operators are a diverse coalition of MDS licensees and ITFS lessees that individually provide video and broadband services utilizing MDS and ITFS spectrum in rural portions of Illinois, Texas, New Mexico, Idaho and Montana.

² See e.g. *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, WT Docket 02-381 rel. Oct. 6, 2003; *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Deployment of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, (Oct. 6, 2003).

to, or competitive choice for, important services. Accordingly, while the Commission seeks to provide added flexibility in the MDS and ITFS bands for new services, the Rural Operators hope the implementation of that flexibility will not have the effect of impairing the rights of rural operators to continue to offer the valued video and broadband services in rural America that they offer today.

Specifically, as noted by the Rural Operators in individual comments, if the Commission adopts significant changes to the MDS and ITFS band plan or to its MDS and ITFS technical rules, it should afford rural operators who are providing valuable services to the public today with sufficient flexibility in implementation or exempt rural carriers from such regulatory changes altogether. Such an exemption could, but need not specifically, take the form of the MVPD Opt-out advocated by WCAI's Coalition. Rural Operators who are using their spectrum in the public interest today, and their rural customers, should be protected by the Commission and spared from the implementation of mandatory changes in regulation by a date certain, loss of actively used spectrum to new entrants, changes in channelization, spectrum block size, maximum transmission power, and permissible use of the spectrum. These changes, if mandated, either individually or collectively, could devastate active video and broadband service to rural consumers. The survival of many essential video and broadband services in rural America depends on the ability of rural carriers to continue to provide uninterrupted video and broadband services to rural customers, regardless of the outcome of this proceeding.

While the FCC works hard to breathe life into spectrum that has been languishing in urban markets, the Rural Operators remind the Commission that there still are vibrant MDS and ITFS operators providing critical video and broadband services to rural America. The Commission should avoid the unintended consequence of crippling, if not killing off these rural operators altogether, by allowing such operators to continue to provide video and broadband services without interruption following the adoption of a new band plan or regulatory regime.

Respectfully Submitted,

/s/ Donald L. Herman, Jr.

Counsel for Central Texas
Communications, Inc. and
Leaco Rural Telephone Cooperative,
Inc.

/s/ Terry Smith
Willis E. Twiner

Teton Wireless Television,
Inc.